Schenk Packing Company *and* United Food and Commercial Workers Union Local 44, affiliated with United Food and Commercial Workers International Union, AFL–CIO, CLC. Case 19–CA–20214

January 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

Upon a charge filed by the Union on March 6, 1989, and an amended charge filed on May 8, 1989, the General Counsel of the National Labor Relations Board by the Regional Director for Region 19 issued an amended complaint and notice of hearing dated September 27, 1989. The complaint alleges that the Respondent has violated Section 8(a)(1) of the National Labor Relations Act by inducing its employees to resign their union membership. The complaint also alleges that the Respondent has violated Section 8(a)(1) and (3) by locking out certain unit employees and conditioning their reinstatement on resignation from the Union. The complaint alleges further that the Respondent has violated Section 8(a)(1), (3), and (5) by giving benefits related to terms and conditions of employment, without prior notification to and bargaining with the Union, to unit employees who resigned from the Union and by withholding such benefits from locked-out employees.

On October 24, 1989, the General Counsel, the Respondent, and the Union filed with the Board a joint motion to transfer this proceeding to the Board the charges, the amended complaint and notice of hearing, the Respondent's answer, and the stipulation of facts with attached exhibits constitute the entire record in this case and that no oral testimony was necessary or desired by the parties. The parties further stipulated that they waived a hearing and the making of findings of fact, conclusions of law, and the issuance of a decision and recommended Order by an administrative law judge, and submitted the case directly to the Board for findings of fact, conclusions of law, and a Decision and Order.

On December 18, 1989, the Board issued an order granting the joint motion, approving the stipulation of facts, and transferring the proceeding to the Board. The General Counsel and the Respondent subsequently filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation of the State of Washington, engaged in the operation of a beef slaughter, boning, and grinding facility near Stanwood, Washington. During the 12-month period preceding the execution of the parties' stipulation of facts, the Respondent had gross sales of goods and services valued in excess of $500,000. During the same time period, the Respondent sold and shipped goods or provided services valued in excess of $50,000 from within the State, either to customers outside the State, or to customers within the State who themselves were directly engaged in interstate commerce. During the same time period, the Respondent purchased and received goods and materials valued in excess of $50,000 either directly or indirectly from sources outside Washington State. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We further find that the Union, United Food and Commercial Workers Union Local 44, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The Respondent and the Union have had a collective-bargaining relationship since 1966. That relationship has resulted in successive collective-bargaining agreements, the most recent of which expired January 31, 1989. The unit represented by the Union consists of production and loading employees of the Respondent, specifically, its employees working on the kill floor, in the boning department, and in the grinding department. In January 1989,[1] the parties began negotiations for a new collective-bargaining agreement. On February 13, the Respondent presented the Union with a final offer. On February 21, the unit employees rejected the Respondent's offer, and voted to authorize a strike if the Respondent and the Union could not agree on a new contract. When told of the employees' rejection of its offer and their strike authorization, the Respondent insisted that the Union provide 2 weeks' notice of any strike, asserting that this would allow it to regulate its purchase of cattle for slaughter and avoid the potential for spoilage of slaughtered beef awaiting boning and grinding. The Union, disagreeing with the Respondent's assertions, offered to give 48 hours' notice before commencing a strike.

On February 23, the Respondent initiated a partial lockout, laying off first its kill-floor employees, and then its boning department employees. For approxi-

[1] All dates hereafter are in 1989 unless otherwise noted.

mately the next 2 months, the Respondent operated only its grinding department, using the unit employees who had been working in that classification. On April 21, following impasse in the parties' negotiations, the Respondent unilaterally implemented its final offer of February 13.

On April 26, the Respondent distributed a memorandum to the unit employees concerning the ''labor dispute'' and the employees' ''current employment status.'' The memorandum recounted the Union's refusal to agree to a 2-week strike notice and asserted that the partial lockout was necessary to avoid the risk of alienating customers by failing to deliver the Respondent's product and the risk of ''being stuck with cattle we could not process.'' The memo also discussed perceived uncertainties regarding the legality of the partial lockout, the Union's filing of unfair labor practice charges concerning it, and the Regional Office's submission of the question to the Division of Advice in Washington, D.C. The memo then set forth the following:

> Effective Friday, April 28, 1989, we will institute a total lockout in which all Union employees will be locked out. While we are reluctant to take this action, it is clear that a total lockout under these circumstances is perfectly legal and resolves any uncertainty as to a partial lockout. During this lockout, the following conditions apply: (1) no Union members will be employed as replacements; (2) we are only entitled to use temporary non-union employees as replacements during the lockout, and (3) if locked out Union employees become non-union members of the labor market, it is possible for them to be hired temporarily for the duration of the lockout. However, it is important to understand that we cannot and are not by this letter encouraging you one way or the other with respect to resigning from the Union. Nor are we in any way promising you a job in the event that you do resign from the Union. The question as to whether you remain members of the Union or resign is totally yours to make and we are not taking a position one way or the other. We are simply reviewing the existing facts in light of the applicable national labor law. We trust you understand our position in that respect.

On April 28, the Respondent, pursuant to the intentions expressed in the April 26 memo, initiated a total lockout of all employees who were members of the Union. Ten unit employees resigned from the Union between April 26 and May 5; these employees were permitted to return to work.[2] For the duration of the lockout—approximately 1 month—the Respondent operated its facility with the use of management and supervisory personnel, nonunit employees, the unit employees who resigned from the Union, and newly hired temporary replacements. No unit employee who maintained membership in the Union was allowed to work.

About May 4, the Respondent gave all its employees who were actively employed between April 28 and May 4 a bonus package consisting of a $500 check and a written notice conferring an additional week of paid vacation. The group of employees receiving the bonus package included the unit employees who had resigned from the Union and returned to work by May 4. None of the unit employees who remained locked out received the bonus package. The Respondent did not inform employees or the Union prior to May 4 that the bonus package would be given, or otherwise provide the Union an opportunity to bargain about the package. The package was not part of the Respondent's final offer implemented on April 21.

Pursuant to the terms of a memorandum distributed to unit employees on May 24, the Respondent allowed the locked-out kill-floor and grinding department employees to return to work on May 31, and allowed the locked-out boning department employees to return to work on June 1, thus terminating its lockout on those dates. On May 31, the unit employees commenced a strike. On July 26, after the Respondent and the Union reached agreement on a new collective-bargaining agreement, the employees ended the strike and offered unconditionally to return to work.[3]

B. *Contentions of the Parties*

The General Counsel contends that the Respondent's April 26 memo announced an intention to discriminate against employees who were union members by locking them out, and induced and encouraged unit employees to relinquish their union membership in order to continue working, and thereby coerced employees in violation of Section 8(a)(1). The General Counsel further contends that the Respondent's lockout commencing on April 28 was in and of itself discriminatory and unlawful under Section 8(a)(3) and (1), and without any legitimate business justification, because its purpose was to deny employment to employees who were union members and to condition further employment on resignation from the Union. With regard to the Respondent's conferral of the bonus package, the General Counsel argues that it violated Section 8(a)(1), (3), and (5) because it interfered with unit employees' Section 7 rights, because it constituted disparate treatment for the purpose of discouraging union membership, and

[2] It is not clear in the stipulated record, and there is no complaint allegation, that these unit employees were ''hired'' as ''temporary employees,'' as the April 26 memorandum suggested they would be.

[3] On June 27, the Division of Advice determined that no complaint allegation should issue with respect to the partial lockout, i.e., the lockout the Respondent maintained until April 28. The legality of the partial lockout is thus not at issue in this case. See *Bali Blinds Midwest*, 292 NLRB 243, 246 (1989), for a discussion of the lawfulness of a partial lockout.

because it amounted to a change in the terms and conditions of employment of those unit employees who received it without prior bargaining with the employees' bargaining representative.

The Respondent contends that the lockout was lawful, justified by its need to protect against the spoilage of unprocessed beef in the event of a strike. With regard to the April 26 memo, the Respondent contends that it simply stated the Respondent's view of the facts and applicable law, containing no threat of reprisal or promise of benefit, and was thus protected under Section 8(c). The Respondent further argues that because it neither induced employees to resign from the Union nor conditioned reinstatement on union resignation, its allowing employees who voluntarily resigned from the Union to return to work was also lawful. With respect to the bonus package, the Respondent contends that it was awarded during the course of the lockout pursuant to substantial business justifications,[4] which outweighed any minimal impact on unit employees' Section 7 rights, and, therefore, did not violate Section 8(a)(1). Concerning the 8(a)(5) allegation, the Respondent contends that because the bonus package constituted a gift rather than wages, it was not a term and condition of employment over which the Respondent had an obligation to bargain.

C. *Discussion*

1. The April 26 memorandum and the lockout

An employer's statement to employees that conditions employment on giving up union membership or activity tends to interfere with, restrain, and coerce employees in the exercise of Section 7 rights and violates Section 8(a)(1). See, e.g., *A-1 Schmidlin Plumbing Co*., 284 NLRB 1506 (1987). Although an employer does not violate the Act merely by providing employees with information relating to union resignation, if it additionally creates a situation in which employees would tend to feel imperiled should they refrain from resigning, the employer's conduct constitutes unlawful solicitation of resignation from union membership. See, e.g., *Manhattan Hospital*, 280 NLRB 113, 114–115 (1986), enfd. mem. 814 F.2d 653 (2d Cir. 1987), cert. denied 483 U.S. 1021 (1987). We find that the Respondent's April 26 memorandum amounted to such an unlawful solicitation and violated Section 8(a)(1).

In its April 26 memorandum, the Respondent made three significant points concerning employment of unit employees during its impending lockout that created a situation in which the employees would reasonably tend to perceive a substantial employment risk should they fail to resign from the Union. To the extent that the memorandum suggested that the Respondent's temporary hiring options were limited for legal reasons to applicants who were not union members, it was incorrect as a matter of law and misleading to employees.[5] Its stated condition that ''no Union members will be employed as replacements'' is an explicit statement of its intention to discriminate in employment against those maintaining union membership. Finally, its suggestion that locked-out union members might be reinstated during the lockout if they first revoked their union membership is a specific, unlawful solicitation to resign from the Union. The Respondent's message was that it would not even *consider* unit employees for employment while the lockout was in effect unless they withdrew from the Union. This condition for employment consideration is neither justified nor mitigated by any other statements in that particular paragraph or any other part of the April 26 memo. Whether one interprets the Respondent's statements concerning employment conditions during the lockout as a threat of continued layoff for unit employees who do not resign from the Union, or as a promise of consideration for employment for those who effect such resignations, it is abundantly clear that Section 8(c)—which sanctions neither threats nor promises—provides the Respondent no protection. The Respondent's solicitation of employees' union resignations in the context of an unprotected threat and promise quite reasonably tended to interfere with, restrain and coerce the unit employees in the exercise of their Section 7 rights, and violated Section 8(a)(1). *A-1 Schmidlin*, supra, *Manhattan Hospital*, supra.

In considering the lockout of unit employees that began on April 28, we find substantial guidance in the Supreme Court's opinion in *American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965). There the Court held that an employer may lawfully lock out its unit employees temporarily for the sole purpose of applying economic pressure in support of its valid bargaining position. Id. at 318. In discussing the appropriateness of examining the employer's motivation for establishing its lockout in the context of alleged 8(a)(3) dis-

[4] The General Counsel moved that the Respondent's factual assertions in its brief concerning its motivation for the bonus package be stricken as beyond the scope of the parties' stipulation. We will dispose of the motion below.

[5] In defending against the 8(a)(1) allegation concerning the statements in its April 26 memo, and against the 8(a)(3) allegations regarding the lockout, the Respondent primarily relies on the court's decision in *NLRB v. Martin A. Gleason, Inc*., 534 F.2d 466, 476 (2d Cir. 1976), remanding 215 NLRB 340 (1974). The *Gleason* case, however, is distinguishable; the lockout there was called by members of an employers association in response to the union's whipsaw strike, and the inducement to resign from the union occurred subsequent to the initiation of the lockout. Additionally, the Board has never endorsed the Second Circuit's views expressed in that opinion concerning what an employer lawfully may say and do in the context of a lockout.

Further, to the extent the Respondent ultimately relies on language in *NLRB v. Brown Food Store*, 380 U.S. 278 (1965), concerning ''the use of temporary nonunion personnel in preference to the locked-out union members,'' id. at 288, we find such reliance unavailing. We do not interpret *Brown* as establishing a privilege, or a duty, to discriminate against union members in temporary hiring in a lockout situation. That issue was clearly not before the *Brown* Court.

crimination, the Court noted the limited nature of the situation before it:

> There is no claim that the employer locked out only union members, or locked out any employee simply because he was a union member; nor is it alleged that the employer conditioned rehiring upon resignation from the union.

Id. at 312.

The situation the Supreme Court distinguished in *American Ship Building* is before us in the present case. Pursuant to its April 26 memo the Respondent engaged in a lockout of certain unit employees that lasted for about a month. That memorandum clearly stated that union members would not be hired as replacements during the lockout, and that unit employees would be considered for employment only if they resigned from the Union. Further, during the course of the lockout, the Respondent reinstated 10 unit employees who did resign from the Union, while those who remained union members continued to be deprived of their employment. These facts establish a clear basis for finding that discouragement of the unit employees' union membership was a fundamental objective in the Respondent's decision to conduct the April 28 lockout.

The Respondent contends that its justification for the April 28 lockout was the same as for the earlier, partial lockout–to avoid the spoilage of meat that would occur because of a strike called by the Union without sufficient notice. For the purposes of this decision, we shall assume without deciding that the Respondent's interest in avoiding spoilage of its product underlay its 2-week strike notice proposal, that its decision to implement a total lockout was based in part on a desire to avoid legal issues implicated in its earlier, partial lockout, and that these considerations had an adequate nexus with the Respondent's ''legitimate bargaining position.'' None of these assertions, however, provides even a remote justification for a lockout which, in its initial announcement to unit employees, expressly conditioned reinstatement on resignation from union membership.

We conclude, therefore, that an unavoidable effect and, hence, unstated purpose of the lockout was to discourage unit employees' membership in the Union by denying employment to those who maintained that status. Accordingly, the Respondent's conduct violated Section 8(a)(3) and (1), as alleged in the complaint.[6] See *United Chrome Products*, 288 NLRB 1176 fn. 2 (1988), in which the Board found, inter alia, an 8(a)(3) violation, concluding that the employer's lockout of unit employees followed by their rehire as new, probationary employees was a device to implement unlawfully a unilateral change in seniority rights.

[6] Because the complaint does not allege that the Respondent's hiring of temporary replacements during the lockout was unlawful, *Harter Equipment*, 280 NLRB 597 (1986), review denied sub nom. *Operating Engineers Local 825 v. NLRB*, 829 F.2d 458 (3d Cir. 1987), is inapplicable in this case.

2. The bonus package

As set forth above, about May 4, the Respondent gave all its actively employed workers—i.e., those who were not locked out—a bonus package consisting of a $500 check and a written note awarding them an extra week of vacation. Although occurring in the context of an unlawful lockout, these circumstances are somewhat analogous to a situation in which an employer, following a strike by unit employees, decides to grant benefits to its employees who worked during the strike, including those unit employees who chose to cross the picket line and return to work, while withholding such benefits from those who engaged in the strike. In the appropriate circumstances, the Board has found that conduct of this kind violates Section 8(a)(1) because of its impact on employees' rights to engage in protected activity, see, e.g., *Desert Inn Country Club*, 282 NLRB 667, 668 (1987); *Rubatex Corp*., 235 NLRB 833, 835 (1978), enfd. 601 F.2d 147 (4th Cir. 1979); *Swedish Hospital Medical Center*, 232 NLRB 16 (1977), reconsidered sua sponte 238 NLRB 1087 fn. 2 (1978), enfd. in relevant part 619 F.2d 33 (9th Cir. 1980); *Aero-Motive Mfg. Co*., 195 NLRB 790, 792 (1972), enfd. 475 F.2d 27 (6th Cir. 1973). The Board has also found that conduct of this sort may violate Section 8(a)(3) because the disparate, detrimental treatment of those who engaged in activity in support of the union discourages further participation in such activity and in union membership. See, e.g., *Desert Inn*, supra at 668; *Swedish Hospital*, supra, 232 NLRB at 20–22. Finally, the Board has found that the conferral of additional compensation on some unit employees—those who returned to work during the strike—without prior notice to and bargaining with the unit employees' bargaining representative may constitute a unilateral change in terms and conditions of employment in violation of Section 8(a)(5). See, e.g., *Rubatex*, supra at 835; *Swedish Hospital*, supra, 232 NLRB at 21–22; *Aero-Motive*, supra at 792–793.

We address first the 8(a)(3) allegation attacking the award of the bonus package. A threshold question is whether the bonus package was a ''term or condition of employment'' within the meaning of Section 8(a)(3).[7] The parties' stipulation of facts provides scant reference to the nature of the bonus package. However, in its brief, the Respondent asserts that the bonus package was the product of a business decision ''to reward these employees working the long hours required by the strike [sic] and suffering the abuse from the Union which had been taking place.''[8] The Board has authority to accept as fact assertions by a party that are mate-

[7] This is an equally important threshold matter in the 8(a)(5) analysis below.

[8] R. Br. 4.

rial to an unfair labor practice issue and that constitute admissions against that party's interest. See, e.g., *Massillon Community Hospital*, 282 NLRB 675 fn. 5 (1987); *Florida Steel Corp*., 235 NLRB 1010, 1011–1012 (1978). Therefore, we accept as fact the Respondent's assertion that the bonus was in the nature of compensation for services the Respondent perceived to have been rendered, even in the absence of stipulations or evidence to support the proposition that employees worked ''long hours'' and suffered ''abuse from the Union'' during the lockout.[9] As compensation, the bonus package given to each of the Respondent's employees who were not locked out constituted terms and conditions of employment within the meaning of the Act. *Desert Inn*, supra at 668; *Rubatex*, supra at 835; *Swedish Hospital*, supra, 238 NLRB at 1087.

The conferral of the bonus package in the circumstances of this case was clearly a matter of disparate treatment: all employees who were actively employed on May 4 received the bonus, and those who were locked out—union members—did not. Further, taking account of the context in which the bonus was given—the unlawful April 26 memo inducing unit employees to resign from the Union and the ongoing, unlawful lockout that conditioned reinstatement on union resignation, we find that a motivating factor for the award of the bonus was to discourage union membership. Thus, the Respondent not only locked out union members but denied them substantial extra benefits that it gave to the nonunion employees it permitted to work during the lockout. The Respondent's asserted business purpose—to reward those employees who, it perceived, were working hard and in difficult circumstances—cannot stand as a sufficient justification for the granting of benefits in support of an unlawful lockout. The Respondent's discriminatory conferral of the May 4 bonus package violated Section 8(a)(3).[10]

With respect to the 8(a)(1) allegation, we focus on the objective impact of the Respondent's granting of the bonus package apart from any subjective motivation. Awarding benefits to employees it permitted to continue working, while withholding those benefits from employees it had unlawfully locked out, had a reasonable tendency, during and after the lockout, to interfere with the unit employees' exercise of Section 7 rights, particularly their right to maintain their union membership.[11] Accordingly, the conferral of the bonus package violated Section 8(a)(1) independent of the 8(a)(3) violation above.

Concerning the complaint's 8(a)(5) allegation, it is stipulated that the bonus package was not part of the ''final offer'' the Respondent implemented on April 21 following bargaining impasse. It is further stipulated that unit employees who had resigned their union membership and returned to work were among those who received the bonus package, and that the Union was not informed or given an opportunity to bargain concerning the package prior to its distribution. We have already found that the bonus package constituted compensation, rather than a ''gift'' as the Respondent contends, and as such it is a term and condition of employment over which the Respondent was required to bargain with the Union.[12] Taking the above into account, the Respondent's granting of the bonus package to certain of the unit employees was a unilateral change in terms and conditions of employment in violation of Section 8(a)(5).

CONCLUSIONS OF LAW

1. By the statements in its memorandum dated April 26 that solicited employees' resignations from the Union and promised consideration of employment for those who resigned and threatened those who did not, and by its award of a bonus package on May 4 to nonunion employees while withholding it from employees who were union members, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By locking out employees who were union members beginning April 28 and conditioning their reinstatement on resignation from the Union, and by awarding a bonus package on May 4 to nonunion employees while withholding it from employees who were union members, the Respondent has discriminated in regard to hire, tenure, and terms and conditions of employment in order to discourage membership in the Union, in violation of Section 8(a)(3) and (1) of the Act.

3. By awarding a bonus package to certain unit employees on May 4 that changed their terms and conditions of employment without prior notification to and bargaining with the Union, the Respondent has violated Section 8(a)(5) and (1) of the Act.

[9] In light of the above, we deny the General Counsel's motion to strike from the record the reasons for the bonus package asserted in the Respondent's brief.

[10] Regarding the 8(a)(3) bonus package and the Respondent's 8(a)(3) lockout as well, in light of the evidence of unlawful motivation and the inadequacy of the Respondent's asserted justifications, we find it unnecessary to consider whether either incident may be characterized as ''inherently destructive'' conduct within the meaning of *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967).

[11] Due to the ongoing nature of the lockout, it would appear that the immediate discouraging effect on the Sec. 7 rights of unit employees currently affected by the lockout would be greater than the effect of such a bonus awarded after unit employees returned to work, as in *Desert Inn*, supra, and *Swedish Hospital*, supra.

[12] Additionally, we note that, to the extent the bonus package itself may reasonably be perceived as illegal in light of the 8(a)(1) and (3) violations found above, this is not a defense to the Respondent's failure to bargain about it. Discussion with the Union of the bonus package as a proposal might have opened the question of its legality, leading the Respondent to withdraw the proposal and to consider alternatives. *Rubatex*, supra at 835; *Aero-Motive*, supra at 792.

REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, we shall order it to cease and desist and post an appropriate notice.

With respect to affirmative relief, the General Counsel points out that the Respondent ended its unlawful lockout and offered reinstatement to employees on or about May 31. Accordingly, the General Counsel seeks a make-whole order for all unit employees who suffered a loss of earnings and other benefits because they were unlawfully locked out between April 28 and May 31. We agree and will so order.[13]

With respect to the Respondent's award of the bonus package, in violation of Section 8(a)(1) and (3), we agree with the General Counsel that rescission is an inappropriate remedy pursuant to Board order because of its likely discordant impact on employees already affected by the Respondent's unfair labor practices. Accordingly, the appropriate affirmative remedy here is the conferral of the same bonus package—$500 and an additional week of paid vacation—on those unit employees whose ineligibility for the bonus package was premised on the Respondent's unlawful conduct, thus restoring the statutorily required equality of treatment between employees who exercised protected rights and those who did not. See, e.g., *Rubatex*, supra at 835–836; *Swedish Hospital*, supra at 22–23; *Aero-Motive*, supra at 793.

Accordingly, the Respondent will be ordered, inter alia, to make prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and backpay to be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), where applicable.

ORDER

The National Labor Relations Board orders that the Respondent, Schenk Packing Company, Stanwood, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Making promises to and threatening employees based on their union membership status and soliciting their resignations from United Food and Commercial Workers Union Local 44, affiliated with United Food and Commercial Workers International Union, AFL–CIO, CLC and conferring benefits on nonunion employees while withholding such benefits from employees who are union members.

(b) Discouraging membership in the Union by locking out employees who are union members and conditioning their reinstatement on resignation from the Union, and by awarding benefits to nonunion employees while withholding such benefits from employees who are union members, or in any other manner discriminating against employees with respect to wages, hours, or terms and conditions of employment.

(c) Awarding benefits to unit employees that change their terms and conditions of employment without prior notification to and bargaining with the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole those employees who were unlawfully locked out from April 28 until May 31, 1989, for any loss of earnings and other benefits suffered as a result of the discrimination against them, and make whole those employees who were discriminatorily denied the bonus package awarded to other employees on May 4, l989, in the manner set forth in the remedy section of this Decision and Order.

(b) Remove from its files any reference to the unlawful lockout as it pertains to each affected employee and notify the employee in writing that this has been done and that the lockout will not be used against him or her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Stanwood, Washington facility copies of the attached notice marked ''Appendix.''[14] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[13] It is apparent from the parties' stipulation that certain of the 10 employees who resigned their union membership and returned to work were initially locked out on April 28, and thus may be entitled to a measure of make-whole relief. We will leave specific identification of these and the other unit employees entitled to relief to the compliance stage of this proceeding. In addition, we note for compliance purposes that the stipulation states that unit employee John Hernandez returned from a work-injury compensation program on May 20 and is considered to have been locked out as of that date.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT make promises to or threaten employees based on their union membership status and solicit their resignations from United Food and Commercial Workers Union Local 44, affiliated with United Food and Commercial Workers International Union, AFL–CIO, CLC and WE WILL NOT confer benefits on nonunion employees while withholding such benefits from employees who are union members.

WE WILL NOT discourage membership in the Union by locking out employees who are union members and conditioning their reinstatement on resignation from the Union, or by awarding benefits to nonunion employees while withholding such benefits from employees who are union members, or in any other manner discriminate against employees with respect to wages, hours, or terms and conditions of employment.

WE WILL NOT award benefits to unit employees that change their terms and conditions of employment without prior notification to and bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole those employees who were unlawfully locked out from April 28 until May 31, 1989, for any loss of earnings and other benefits suffered as a result of the discrimination against them, and WE WILL make whole those employees who were discriminatorily denied the bonus package awarded to other employees on May 4, 1989.

WE WILL remove from our files any reference to the unlawful lockout as it pertains to each affected employee and notify the employee in writing that this has been done and that the lockout will not be used against him or her in any way.

SCHENK PACKING COMPANY